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84-1298

Case No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM 1985

KENNETH B. QUANSAH, JR.,
Petitioner,

v.

BISCO INDUSTRIES, INC. and
CALIFORNIA PLANT PROTECTION,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

PETITION FOR A WRIT OF CERTIORARI

KENNETH B. QUANSAH, JR.
Petitioner, pro se
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QUESTION PRESENTED

Did the U.S.Court of Appeals for the Ninth Circuit properly dismiss petitioner's;

1. Title VII claim for failure to obtain an EEOC right to sue letter while petitioner had then obtained the right to sue letter from State of California Department of Fair Employment & Housing at the time it was requested in the district court;

2. Section 1981 claim for failure to obey the district court order;

3. All of the above claims but did not deprived petitioner from his freedom to file applications or negotiate for jobs nor discriminated against him on the grounds of his race, national origin thus, violated his Civil Rights under First Amendment and Fourteenth Amendment?

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PARTIES TO THE PROCEEDING

KENNETH B. QUANSAH, JR.,
Petitioner,

v

BISCO INDUSTRIES, INC. and
CALIFORNIA PLANT PROTECTION,
Respondents.

OPINION BELOW

EEOC issued a letter dated December 15, 1982 hence, respondent BISCO did not answer petitioner's claim in about a year. A copy of this letter is attached hereto as Appendix 7. State of California Department of Fair Employment & Housing issued a notice of right to sue letter dated March 2, 1983. A copy of this letter is attached hereto as Appendix 6. Petitioner named BISCO and CPP in his original complaint in the District court but only filed a claim in the above agencies against BISCO.

Petitioner therefore utilized his Right to file direct against CPP in the district court. The U.S.District court for the Northern District of California issued an order dated May 23, 1983 to dismiss petitioner's Title VII claim for failure to obtain an EEOC right to sue letter. A copy of this order is attached hereto as Appendix 5. The District court again issued a final order dated June 9, 1983 to dismiss petitioner's Section 1981 claim for failure to obey a district court order. A copy of this order is attached hereto as Appendix 4. Petitioner claims due to the district court's order against him to obtain a notice of right to sue letter he accordingly drops his Title VII claim against CPP. The U.S.Court of Appeals for the Ninth Circuit issued a memorandum dated May 31, 1984 to dismiss the Appeal. A copy is attached hereto as

Appendix 3. The petition for rehearing was denied in an order which was filed on November 19, 1984. A copy is attached hereto as Appendix 2.

JURISDICTION

The jurisdiction of this court is invoked 28 U.S.C § 1254(1). The U.S. Court of Appeals for the Ninth Circuit dismissed petitioner's Title VII claim for failure to obtain EEOC notice of right to sue letter. The State of California Department of Fair Employment & Housing had then given petitioner the notice of right to sue letter. EEOC officials expressed to petitioner there was nothing the Agency could do hence, BISCO did not reply the claim and the Agency has never given a notice of right to sue letter to any one. Petitioner

claims the State's Agency has the power to give such a letter in the same manner as EEOC and this is arguable. The U.S.Court of Appeals for the Ninth Circuit dismissed petitioner's Section 1981 claim for failure to obey a district court order in a memorandum dated May 31, 1984. The petition for rehearing was filed on June 12, 1984. The petition for rehearing was denied in an order dated November 19, 1984. Petitioner's notice of Appeal for a review in U.S.Supreme Court was filed on December 17, 1984 in U.S.Court of Appeals for the Ninth Circuit. A copy is attached hereto as Appendix 8.

STATUTE INVOLVED

The statutes involved are the Civil Rights Act of 1964, Title VII, 42 U.S.C §

§ 2000e et seq., particularly, 42 U.S.C § §§ 2000e-2(a), 2000e-2(j), 2000e-3(b) and the Civil Rights Act of 1870, 42 U.S.C § 1981.

Portions of these statutes are provided in relevant parts and attached hereto as Appendix 1.

STATEMENT OF THE CASE -BISCO

Definitions: "Quansah is used in place of the personal pronoun I and BISCO is used in place of Bisco Industries Inc."

Quansah is glad to live in a society such as this whereby, the constitutional laws gives us the privilege to make, file applications or negotiate for work, labor and services. Inta alia, Quansah has alleged Title VII, Section 1981 and has averred 28 U.S.C § 1343(a) in his original complaint in the district court due to the

circumstances of this matter.

BISCO advertised for an accounts payable clerk in the local news papers, the San Jose Mercury News on April 14, 1982. Quansah went to apply for the job the same day and he was told the job was filled with an applicant while that job was still vacant. On May 3, 1982, May 4, 1982 and May 5, 1982 BISCO successively advertised the same job in the news paper. On May 5, 1982 Quansah telephoned to inquire about the job and a manager in charge told him to file an application after a short discussion. Quansah filed an application after the telephone call. When Quansah was filing his application some white applicants brought in their applications. BISCO's representative told Quansah the manager will set up an interview date for him and the other applicants. BISCO sent out notices and

telephoned other applicants but did not send any notice or telephone Quansah for an interview even though Quansah left his self addressed envolope, first class, postage prepaid for their convenience in case, Quansah was not reached by the telephone. BISCO conducted the interview and after a white applicant was considered, BISCO wrote a letter to thank him for taking part in the interview and not being selected for the job due to his qualifications. Quansah is not claiming the white applicants do not have to look for a job. Quansah is only claiming the employment offices would have to be fair to encourage all job seekers to look for jobs. Quansah did not think this was an administrative error but a proof of an invidious discrimination. Quansah claims BISCO by so doing excluded him from the interview to deprive him from securing

the job. Furthermore, BISCO's application forms and their advertisement did not required qualifications. BISCO apparently required a minimum of high school diploma and Quansah had four years of college. Quansah further claims BISCO excluded him from the interview in order to give the job to a white person. Quansah also insists BISCO refused to allow him to file an application for the job while the job was still vacant and nobody was working in that position. Quansah claims when he was filing his application at the receptionist lobby in BISCO a group of BISCO's white employees gathered together at a doorway when he was alone in the lobby and shouted at him "we all want to know what a worry he is and how he can get this job." Those employees then laughed and dispersed.

As a result of all the above Quansah claims he is deprived from his rights,

privileges and discriminated against on the grounds of his race, national origin thus, violated his Civil Rights under First Amendment and Fourteenth Amendment.

Quansah filed a claim in EEOC and State of California Department of Fair Employment & Housing against BISCO. BISCO did not reply the complaint. Quansah asked EEOC for a notice of right to sue letter and EEOC denied him. The State of California Department of Fair Employment & Housing gave Quansah a notice of right to sue letter. Quansah proceeded with a lawsuit against BISCO and CPP in the district court. BISCO replied the complaint and demanded Quansah obtain a notice of right to sue letter. The district court granted BISCO's request at the first status conference although BISCO and Quansah received copies of the right to sue letter from the State Agency before that status conference

began. The Judge denied the State Agency letter and demanded EEOC right to sue letter. The district court issued an order dismissing Quansah's complaint in part for his Title VII claim and a second order to dismiss Quansah's Section 1981 claim for not obeying a district court order. Quansah subsequently filed an appeal in the district court. The court of Appeals dismissed Quansah's Title VII claim for failure to obtain an EEOC right to sue letter and Section 1981 claim for failure to obey a district court order.

Quansah hence, filed a notice of appeal on December 17, 1984 for a review in the U.S.Supreme Court. Quansah insist his rights are violated under Title VII and Section 1981. Quansah claims, the district court has jurisdiction under the State of California notice of right to sue letter. Quansah further claims, a

notice of right to sue letter is not a jurisdictional prerequisite for Section 1981 claim and the district court Judge should have conducted the status conference.

STATEMENT OF THE CASE-CPP

Definitions: "Quansah is used in place of the personal pronoun I and CPP is used in place of California Plant Protection."

Quansah worked for CPP as a security guard from May 1978 to July 13, 1979. Prior to this employment Quansah has worked for security guard companies for about six years. On July 13, 1979 the security guard captain Jim Woods called Quansah to his office and told him CPP administrative office had asked him to send Quansah to the administrative office for a new assignment at a new location.

Hence, Quansah did not have a government security clearance. Quansah claims at that particular period almost all the security guards at that location under Cpt. Woods never had a security clearance. The administrative office for that reason had asked all security guards in that location to file applications for the security clearance in order to work in that location. Quansah had then filed an application and further attended an interview at a security clearance agency to complete his application. Moreover, there were foreign students with student visas working under Cpt. Woods who did not have security clearance and they were not asked to file for the security clearance. However, all these guards work under Cpt. Woods and the administrative office did not ask them to work in a new location which did not require

security clearance. Quansah worked at this location longer than all other security guards and it was the time he should have been promoted to a senior officer. Furthermore, the administrative office employed two white applicants and sent them to work under Cpt. Woods in the week Quansah was asked to go to the administrative office for a new assignment and he had to break them in. However, both guards never had a security clearance previously and Quansah had to obtain a security clearance before he can work at this location. Quansah went to the administrative office but there was no assignment for him and he had to wait at home without pay until there is a vacancy. Quansah stayed home for two weeks constantly checking with the administrative office but he was not recalled. Apparently, Quansah claims he

was forced out of work, on the other hand expelled by the security Cpt. Woods hence, the administrative office did not have a job for him. Further, the administrative office employed two new guards both white to replace him. Quansah claims this was a real proof of invidious de facto discrimination. Quansah asked CPP president Mr. O'Neil for compensation for two weeks he did not work and he told him to file an application for unemployment benefits. Quansah could not collect benefits for the two weeks he did not work but collected benefits from the time he filed his application for the benefits. Quansah claims due to the manner of his expulsion he was not paid for mileage allowance for the use of his private car in performing CPP duties. Quansah claims he was also not paid for accrued vacation hence, CPP promised to recall him and CPP

did not recall him to work. Quansah refiled too many applications at CPP after six months period but he was not rehired although at any time he refiled an application some other applicants were hired.

On August 25, 1982 Quansah still unemployed read CPP advertisement for security guards in the local news paper. In the same day Quansah filed an application at the same time with two other white applicants. The two white applicants were hired and the employment officer told Quansah that CPP will never hire him. Quansah asked the officer why CPP will not hire him hence, he had worked for CPP previously. However, the officer told Quansah that the president for CPP told her not to hire him. Quansah further asked when she was told not to hire him and she got excited and

pulled out Quansah's file from a file case to prove her cause of action. Quansah requested copies of all notes in his file and he received a copy of a letter which reads he was fired. As a result of all the above Quansah claims, CPP deprived him under Title VII and Section 1981 thus, violated his Civil Rights under the First Amendment and Fourteenth Amendment. Quansah herein, filed a lawsuit against CPP and BISCO in the district court. Hence, the question at law and the issues presented were the same. CPP replied the complaint and demanded Quansah obtain a notice of right to sue letter. The district court dismissed Quansah's Title VII claim for failure to obtain EEOC notice of right to sue letter and his Section 1981 claim for failure to obey a district court order. The Appeals Court subsequently,

dismissed the appeal for the same reason.

Quansah herein drops Title VII claim against CPP and seeks redress with the Section 1981 claim. Quansah claims the district court has jurisdiction to trial this case hence, a notice of right to sue letter is not a jurisdictional prerequisite for Section 1981 claim. Quansah claims it is a burden for the district court to dismiss the status conference and order him to file if he intends to proceed with Section 1981 claim. The notice of appeal for review in the U.S.Supreme Court was filed on December 17, 1984.

Quansah seeks to recover attorney fees if permissible by the Civil Rights attorney fees award Act of 1976, 42 U.S.C § 1988. Quansah want to appear in the U. S.Supreme Court to argue all relevant issues he could not present.

STATEMENT OF REASONS

Quansah argues, respondents prayer for mercy can not withstand the power of State order. Herein, Quansah seeks this court to redress the confusion between State and Federal agencies in this matter before us. Quansah argues, respondents have nothing to take from the subject matter "notice of right to sue letter."

Inta alia, Quansah has alleged claims under Title VII and Section 1981 in his original complaint in the district court. Quansah subsequently has averred 28 U.S.C § 1343a for the circumstances of this matter. Quansah argues, he filed a complaint against BISCO in EEOC and in State of California Department of Fair Employment & Housing. BISCO refused to reply the complaint in about a year. Quansah demanded a notice of right to sue letter and EEOC declined hence, BISCO had

refused to reply the complaint. However, State of California Department of Fair Employment & Housing gave Quansah a notice of right to sue letter. Quansah filed a complaint in U.S.District Court and named BISCO and CPP as joining defendants. BISCO and CPP replied the complaint and demanded Quansah obtain a notice of right to sue letter from EEOC. Quansah argues, BISCO's refusal to reply his complaint in EEOC proved disrespect for administrative jurisdiction and intended discrimination against him. Quansah alleged at the status conference the State Agency gave him the right to sue letter and EEOC also gave him a letter. Quansah argues, the district court Judge refused to listen and ordered him to obtain a right to sue letter from EEOC. The Judge then told the court she will dismiss his complaint. Quansah argues, the district court issued

an order to dismiss his complaint in part for his Title VII claim and thereafter a second order to dismiss his Section 1981 claim for failure to file his intent to continue with section 1981 claim in ten days. Quansah argues, this dismissal can not constitute a sua sponte dismissal due to the State Agency right to sue letter which is at our convenience. Quansah argues, it is a burden for the district court to dismiss his complaint hence, the State Agency right to sue letter does not compel him to file a complaint only in the State court but it also permits him to file a complaint in the Federal court.

Quansah further argues, it is totally erroneous for the district court to dismiss the status conference purposely for Title VII claim hence, he alleged Section 1981 claim in his original complaint and that was redressable at the

status conference. Quansah argues, if the district court did not dismiss the status conference he would not have gone through any inconveniences of filing his intent to proceed with the Section 1981 claim which he was unable to file and subjected its dismissal.

Quansah argues, he worked for CPP as a security guard for more than one year and he was laid off for lack of work. Eventually, CPP did not call back Quansah to work. Apparently, CPP publicly advertised for security guards in the local news papers. Quansah argues, he applied for a security guard job and CPP told him he will never be employed in CPP. Quansah alleges, at the same time CPP employed two white applicants and was taking in more applications from some other white applicants. BISCO on the other hand publicly advertised for an

accounts payable clerk and when the job was still open refused to hire him. BISCO refused to process his application. Quansah herein, filed a complaint for Title VII claim against BISCO and CPP in the district court. Quansah argues, the district court Judge merely did not listen to him and dismissed the complaint in an order citing Mahroom v Hook, 563 F. 2d 1369 (9th cir. 1977). Quansah argues, the Mahroom case is inconsistent with his case hence, it was time barred. Quansah alleges, the Appeals Court for the Ninth Circuit also dismissed his appeal for Title VII claim citing the same case and a case which was remanded and inconsistent with the obtaining of a notice of right to sue letter. See McDonnell Douglas Corp. v Green, 411 US 792, 798 (1973). Quansah argues, the plaintiff in this citation obtained a notice of right to sue letter

but EEOC could not determine any reasonable cause for his claimed violation. Quansah alleges, he obtain a notice of right to sue letter from the State Agency. Quansah further argues, BISCO received copies of the notice of right to sue letter from the State Agency. Quansah herein argues, BISCO deliberately motioned that he obtain the right to sue letter to delay the proper adjudication of this matter. The attitudes of the above respondents proves invidious discrimination. See Bevery v Lone Star Lead Construction Corp., 437 F 2d 1136 (CA5 1971); Castro v Beecher, 459 F 2d 725 (CA1 1972); Chance v Board of Examiners, 458 F 2d 1167 (CA2 1972); Conley v Gibson, 355 US 41, 2 L ed 2d, 80 78 S Ct 99 (1957). Quansah argues, it is necessary for this court to substantiate that EEOC has the exclusive

administrative jurisdiction for Title VII claim and not a divided jurisdiction with the State Agency as in Conley, supra. Also see Fekete v U.S.Steel Corp., 424 F 2d 331 (CA3 1970); Flowers v Local 6, Laborers International Union of North America, 431 F 2d 205 (CA7 1970); Hollander v Sears, Roebuck & Co., 392 F Supp. 90 (D.C.Conn. 1975); Johes v Lee Way Motor Freight, Inc., 431 F 2d 245 (CA10 1970); Maty v Grasselli Chemical Co., 303 US 197, 82 L Ed 745, 58 S Ct 507 (1938); McDonald v Santa Fe Trail Transp. Co., 427 US 273, 279, 96 S Ct., 2574, 2578, 49 L Ed 493 (1976); Quarles v Philip Morris, Inc., 279 F Supp. 505 (ED VA 1968); Regents of University of California v Bakke, 438 US 265, 98 S Ct 2733, 57 L Ed 2d 750 (1978); Robinson v Lorillard Corp., 444 F 2d 791, 800 (CA4 1971); Shelley v Kraemer, 334 US 22,

68 S Ct 846 (1947); Steele v Louisville & N.R.Co., 323 US 192, 89 L ed 173, 65 S Ct 226 (1944).

Quansah argues, he accordingly drops his Title VII claim against CPP herein, for failure to file a complaint against CPP in EEOC or in the State Agency to obtain a notice of right to sue letter to proceed with his Title VII claim.

Quansah argues, he alleged Section 1981 claim in his original complaint in the district court. Apparently, CPP refused to allow him to process an application for a publicly advertised job while CPP was still hiring. Herein, the employment officer verbally expressed Quansah wil never be employed in CPP. Quansah argues, on the other hand BISCO publicly advertised for an accounts payable clerk and BISCO deliberately refused to allow him in the application

processing for the job. Quansah argues, after a white person was hired for the job BISCO deliberately wrote a letter to thank him for taking part in the interview process and not being selected because of his qualifications. Quansah alleges, this was a racial attitude and an invidious discrimination. Quansah argues, BISCO and CPP deliberately deprived him from his privileges and rights contained in Section 1981. Quansah alleges, he has the right to take part in the application processing for the job in BISCO and in CPP hence, these jobs were publicly advertised and he was qualified to be hired. See Runyon v McCrary, 427 US 160, 49 L Ed 2d 415, 96 S Ct 2586 (1976). Quansah alleges he is tentatively vexed by the lower court order and seeks to be remedied. Also see Cf. Jones v Alfred H.Mayer Co., 392 US 409, 441-443, n78, 20 L Ed 2d 1189, 88 S Ct

2186, 47 Ohio Ops 2d 43 (1968); Meyer v Nebraska, 262 US 390, 67 L Ed 1042, 43 S Ct 625, 29 ALR 1446 (1923); Norwood v Harrison, 413 US 455, 470 37 L Ed 2d 723, 93 S Ct 2804 (1973); Sullivan v Little Hunting Park, Inc., 396 US 229, 24 L Ed 2d 386, 90 S Ct 400 (1969); Tillman v Wheaton-Haven Recreation Assn., 410 US 431, 439-440, 35 L Ed 2d 403 93 S Ct 1090 (1973).

As a result of all the above, Quansah argues, respondents deprived him from his freedom to file applications or negotiate for jobs and discriminated against him on the grounds of his race, national origin thus, violated his Civil Rights under First Amendment and Fourteenth Amendment.

Quansah seeks to recover his cost of litigation and attorney fees if permissible by the Civil Rights attorney fees award Act of 1976, 42 U.S.C § 1988. See

Regents of University of California v Bakke, 438 US 265, 98 S Ct 2733, 57 L Ed 2d 750 (1978); Runyon v McCrary, 427 US 160, 49 L Ed 2d 415, 96 S Ct 2586 (1976). Quansah alleges, attorney fees were awarded in the above citations and the issues of law are much the same as this case before us. Quansah further argues, attorney fees and costs were awarded against a pro se litigant and it is appropriate to award attorney fees and cost for a pro se litigant. See Wood v McEwen, 644 F. 2d 792, 802 (9th Cir. 1981).

*

CONCLUSION

Quansah is entitled to the total amount of damages in the sum of seven hundred thousand dollars ($700,000.00) brought against above respondents. Herein, BISCO is liable in the sum of three hundred and fifty thousand dollars ($350,000.00). CPP is liable in the sum of three hundred and fifty thousand dollars ($350,000.00). Quansah prays for a reasonable relief. Respondents deliberate deprivation is unreasonable and contrary to the constitution at hand especially for such jobs which are not available only for those with the brains.

DATED: San Jose, California
February 6, 1985.

Respectfully submitted,

KENNETH B. QUANSAH JR.
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CERTIFICATE OF SERVICE

On February 12, 1985 I served the attached document entitled Petition for a Writ of Certiorari by mailing two copies certified, first class, postage prepaid to respondents as follows:

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Executed this 12th day of February, 1985 in San Jose, California.

/s/ K. B. Quansah

KENNETH B. QUANSAH JR
Petitioner, pro-se
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Subscribed and Sworn to Before me

this 12th day of February 1985.

Witness my hand and official seal.

/s/PHIL A. CUFFARO
NOTARY PUBLIC
My Commission Expires 6-6-85.

APPENDIX 1

Statute Involved

42 U.S.C § 2000e-2(a) provides in full:

"It shall be an unlawfull employment practice for an employer-

1. to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

2. to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin."

42 U.S.C § 2000e-2(j) provides in full:

"Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization or joint labor management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization,

admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area."

42 U.S.C § 2000e-3(b) provides in full:

"It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupatio-

nal qualification for employment."

42 U.S.C § 1981 provides in full:

"All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens and shall be subject to like punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other."

APPENDIX 2

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: NOV. 19, 1984

NO. 83-2107

DC NO. C 82-6486 MHP

ORDER

KENNETH B. QUANSAH, JR.,
Appellant,

vs.

BISCO INDUSTRIES, INC. and
CALIFORNIA PLANT PROTECTION,
Appellees.

Appeal from the United States
District Court for the Northern
District of California
Marilyn H. Patel, District Judge,
Presiding

Before: TANG, SKOPIL, and REINHARDT,

Circuit Judges

The panel has voted to deny the petition for rehearing. The petition for rehearing is denied.

APPENDIX 3

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: MAY 31, 1984

NO. 83-2107

DC No. C 82-6486 MHP

MEMORANDUM

KENNETH B. QUANSAH JR
Plaintiff-Appellant,

vs.

BISCO INDUSTRIES, INC. and
CALIFORNIA PLANT PROTECTION,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of California
Marilyn H. Patel, District Judge, presiding

Submitted April 27, 1984

Before: TANG, SKOPIL, and REINHARDT, Circuit Judges

INTRODUCTION

Kenneth B. Quansah, Jr. appeals the district court's order dismissing his employment discrimination claims under Title VII and 42 U.S.C. § 1981. The

district court dismissed Quansah's Title VII claim for failure to obtain an EEOC right to sue letter. Quansah was given 10 days to file a notice or statement with the district court regarding his intention to proceed with the section 1981 claim. Quansah failed to notify the district court within 10 days. The district court ordered that the section 1981 claim be dismissed without prejudice for failure to comply with the court order.

ISSUES

1. Did the district court improperly dismissed Quansah's Title VII claim for his failure to obtain an EEOC right to sue letter?

2. Did the district court improperly dismiss Quansah's section 1981 claim for his failure to obey a district court order?

3. Are appellees entitled to damages, attorney fees, and double costs on appeal?

TITLE VII

The district court correctly dismissed Quansah's Title VII claim for failure to receive a notice of right to sue letter. Receipt of the "right to sue" letter is a jurisdictional prerequisite to an action under Title VII. McDonnell Douglas Corp. v. Green, 411 US 792, 798 (1973); Mahroom v Hook, 563 F.2d 1369, 1374-75 (9th Cir. 1977), cert. denied, 436 US 904 (1978).

SECTION 1981

A district court has the power to dismiss an action with prejudice for failure of a party to comply with "an order of the court." Fed.R.Civ.P. 41(b). Such action may be taken on the court's own motion and may be exercised under the court's inherent power to control its docket and to protect the integrity of

its orders. See Link v Wabash R.R. Co., 370 US 626, 629-33 (1962).

The court properly dismissed without prejudice Quansah's section 1981 claim. Quansah was adequately informed of the court's order, which did not confront Quansah with a burdensome task. He merely had to notify the court of his intention to continue with his section 1981 claim. The dismissal of the claim without prejudice was a less severe sanction than the harsh penalty of dismissal with prejudice. The district court did not abuse its discretion.

DAMAGES AND DOUBLE COSTS

This court has discretion to award damages, attorney fees, and costs as a sanction against bringing a frivolous appeal. See Wood v. McEwen, 644 F.2d 797 (9th Cir. 1981), cert. denied, 455 US 942 (1982); 28 U.S.C. § 1912; Fed.R.App.P. 38.

This court has been reluctant to impose such penalties against a litigant, particularly one appearing pro se. Because Quansah is appealing pro se and his appeal does not appear to be in bad faith, sanctions will not be imposed.

CONCLUSION

This district court's orders dismissing Quansah's Title VII and section 1981 claims are affirmed. Appellees' request for damages, attorney fees, and costs on appeal are denied.

APPENDIX 4

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF
CALIFORNIA

FILED: JUN. 10, 1983

NO. C-82-6486-MHP

ORDER DISMISSING
COMPLAINT WITHOUT
PREJUDICE

KENNETH B. QUANSAH, JR.
Plaintiff,

vs.

BISCO INDUSTRIES, INC.,
CALIFORNIA PLANT PROTECTION,
Defendants.

The Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5, claim in this action was dismissed pursuant to an order filed herein on May 23, 1983. Plaintiff was given ten (10) days to file a notice or statement with this court regarding his intention to proceed with the remaining claim. He has failed to do so. Therefore,

IT IS HEREBY ORDERED that the

complaint be dismissed without prejudice for failure to obey an order of this court.

Dated: JUN 9, 1983

/s/MARILYN HALL PATEL
United States District Judge

APPENDIX 5

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

FILED: MAY 23, 1983

NO. C-82-6486 MHP

ORDER DISMISSING
COMPLAINT IN PART

KENNETH B. QUANSAH, JR.
Plaintiff,

vs.

BISCO INDUSTRIES, INC.,
CALIFORNIA PLANT PROTECTION
Defendants.

The parties appeared in this court at a status conference. At that time plaintiff acknowledged that he had not received a Notice of Right to Sue Letter from the Equal Employment Opportunity Commission. Such a letter is a jurisdictional prerequisite to an action under Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e-5. Mahroom v. Hook, 563 F. 2d 1369 (9th Cir. 1977).

The court indicated that it would sua

sponte dismiss the complaint without prejudice to a refiling upon issuance of a Notice of Right to Sue Letter. Insofar as the action makes a claim under Title VII, the complaint is dismissed.

The court has noted, however, that plaintiff made a claim in his original complaint under 42 U.S.C. § 1981. No administrative procedures are required prior to filing an action under that section. Therefore, plaintiff may proceed on that claim. He may not join the Title VII claim until he receives a Right to Sue Letter, at which time he may amend his complaint.

If the plaintiff intends to proceed on § 1981 claim he should notify this court within ten (10) days of the date of this order and the matter will be set down for status conference. In that case, defendants may wish to address appropriate

motions to the § 1981 cause of action. For the foregoing reasons,

IT IS HEREBY ORDERED that the claim pursuant to 42 U.S.C. § 2000e et seq. is dismissed and plaintiff shall notify this court within ten (10) days of the date of this order of his intent to proceed.

Dated: MAY 20, 1983

/s/MARILYN HALL PATEL
MARILYN HALL PATEL
United States District Judge

APPENDIX 6

STATE OF CALIFORNIA-STATE AND CONSUMER SERVICE AGENCY
DEPARTMENT OF FAIR EMPLOYMENT & HOUSING
888 NORTH FIRST ST., #316
SAN JOSE, CA 95112
(408)277-1264

DATE: 03/02/83
FEZ 82-83 G9 0058/000104820265
QUANSAH/BISCO INDUSTRIES, INC.

NOTICE OF CASE CLOSURE

JR QUANSAH KENNETH B
5535 SUNNY OAKS DRIVE
SAN JOSE, CA 95123

DEAR MR. QUANSAH

The above identified complaint of discrimination which you filed with the Federal Equal Employment Opportunity Commission (EEOC) was also filed with our office. This was done to protect your right to file a private lawsuit in California superior court. Since your complaint has been open for more than 150 days, the department is required to issue this notification. (Refer to California Government Code Section 12965(B).) Should you wish to file a civil suit under California law, you have one year from the date of this letter in which to do so.

The Equal Employment Opportunity Commission will be responsible for the investigation and evaluation of the merits of your complaint. Therefore, your case with the Department of Fair Employment and Housing is being closed

this date on the basis of "processing waived to another Agency." Please direct any questions you may have regarding your complaint to EEOC.

Sincerely,

/s/Satish Wadhwa
District Administrator

cc:
BISCO INDUSTRIES, INC.

DFEH 200-30

APPENDIX 7

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION
SAN JOSE AREA OFFICE
84 West Santa Clara Street, Rm 300
San Jose, California 95113
Telephone (408)275-7352

Kenneth B. Quansah
5535 Sunny Oaks Drive
San Jose, California 95123

RE: BISCO INDUSTRIES, INC.

Dear Quansah:

Your charge of employment discrimination has been withdrawn in accordance with your request.

On Behalf of the Commission:

/s/Mary F. Evans — 12/15/1982
Area Director — Date

APPENDIX 8

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED: DEC. 17, 1984

No. 83-2107

NOTICE OF APPEAL
pro-se

KENNETH B. QUANSAH JR.,
Appellant,

vs.

BISCO INDUSTRIES, INC. and
CALIFORNIA PLANT PROTECTION,
Appellees.

Notice is hereby given that Appellant Kenneth B. Quansah Jr., Appeals from this court's order on November 19, 1984 to the Supreme Court of the United States pursuant to 28 U.S.C. § 1254.

Appellant claims the Judges in the above case were prejudice hence, he attached copies of the right to sue letter to his Brief and claimed he had told the district court Judge he received such letter therefore did not have to go

EEOC as well as State of California Department of Fair Employment & Housing for such letter at the first status conference in the district court. The district court Judge did not listen to Appellant and kept saying she was going to dismiss the case hence, she dismissed the case for this same reason. Both courts intended and argued without respect to the right to sue letter Appellant obtained and insisted Appellant refused to obtain the right to sue letter in order to be easy for them to expedite the case. How can Appellant go and obtain a letter the agencies above had already given him. Appellant claims, it is a burden for him to be assigned Judges as such who look down on pro-se. Appellant claims, the Judges should have explained the right to sue letter he obtained was not what was required by

them.

/s/KENNETH B. QUANSAH JR.

KENNETH B. QUANSAH JR.
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)274-1968

cc:
TOMLINSON & COHEN
Attorneys for BISCO

SHAPIRO & COHEN
Attorneys for CPP

Certificate Of Service

On December 14, 1984 I served the attached document entitled Notice of Appeal by mailing copies first class, postage prepaid to the following:

TOMLINSON, ZISKO & COHEN
John D. Croll, Esq., (of counsel) 480 California Ave., Suite 205
Palo Alto, CA 94306
Telephone (415)325-8666
Attorneys for Appellee
BISCO IND. INC.

and

LAW OFFICES OF SHAPIRO & COHEN, Harry J. Cohen Esq.,
12160 Victory Boulevard
North Hollywood, CA 91606
Telephone (213)877-1388
Attorneys for Appellee
CPP INC.

Executed this 14th day of December, 1984 in San Jose, California.

/s/KENNETH B. QUANSAH JR.
KENNETH B. QUANSAH JR.
P. O. Box 51759
San Jose, CA 95151-5759
Telephone (408)274-1968